

UNITED STATES BANKRUPTCY COURT  
EASTERN DISTRICT OF NEW YORK

Firm ID xxxxxxxx1938  
Date: 6/16/15 @ 10:00 a.m.

-----X  
In re

William D. Strein

Chapter 7  
Case No. 15-71844-las

Debtor,  
-----X

**NOTICE OF MOTION TO AVOID JUDICIAL LIENS**

**PLEASE TAKE NOTICE**, that upon the annexed Affidavits of William D. Strein and by his attorneys Macco & Stern, LLP, the undersigned will move this Court before the Honorable Louis A. Scarcella, Bankruptcy Judge, on the 16<sup>th</sup> day of June, 2015, at 10:00 a.m. at the United States Bankruptcy Court, Long Island Federal Courthouse, 290 Federal Plaza, Courtroom 760, Central Islip, New York 11721 or as soon thereafter as counsel can be heard, for an Order pursuant to 11 USC Section 522(f), avoiding the judicial lien of American Express Bank FSB and Capital One Bank USA NA, together with such other and further relief as this Court may deem just and proper.

**PLEASE TAKE FURTHER NOTICE**, that objections, if any, to the proposed Order must be in writing and filed with the Clerk of the Court, United States Bankruptcy Court, Eastern District of New York, 290 Federal Plaza, Central Islip, New York 11722 (a)(i) through the Bankruptcy Court's electronic filing system (in accordance with General Order M-242), which may be assessed (with password which is available by contacting the Bankruptcy Court's technical assistance at 631-712-6200, Monday through Friday, 8:30 a.m. to 5:00 p.m.) through the Internet at the Bankruptcy Court's website: [www.nyeb.uscourts.gov](http://www.nyeb.uscourts.gov) using Netscape Navigator software version 3.0 or higher, and (ii) in portable document format (PDF) using

Adobe Exchange software for conversion; or (b) if a party is unable to file electronically, such party shall submit the objection in PDF format on a diskette in an envelope with the case name, case number, type and title of document, document number of the document to which the objection refers, and the file name on the outside of the envelope; or (c) if a party is unable to file electronically or use PDF format, such party shall submit the objection on a diskette in either Word, WordPerfect, or DOS text (ASC II) format. An objection filed by a party with no legal representation shall comply with section (b) or (c) as set forth in this paragraph. A hard copy of the objection, whether filed pursuant to section (a), (b) or (c), as set forth in this paragraph, shall be hand-delivered directly to the Chambers of the Honorable Louis A. Scarcella, and served so as to be received by Macco & Stern, LLP, 135 Pinelawn Road, Suite 120 South, Melville, New York 11747, no later than June, 11, 2015.

**PLEASE TAKE FURTHER NOTICE**, that answering papers if any, shall be filed with this Court, and served upon the undersigned within three (3) days of the return date of this motion.

Dated: Melville, New York  
May 8, 2015

MACCO & STERN, LLP  
Attorneys for Debtor

BY: \_\_\_\_\_

Michael J. Macco  
135 Pinelawn Road, Suite 120 South  
Melville, New York 11747  
(631)549-7900

To: Office United States Trustee  
Marc A. Pergament, Esq.  
American Express Bank FSB  
Joshua J. Knurr, Esq.  
Capital One Bank USA NA  
Forster & Garbus LLP

UNITED STATES BANKRUPTCY COURT  
EASTERN DISTRICT OF NEW YORK

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**AFFIDAVIT IN SUPPORT OF**  
**MOTION TO AVOID JUDICIAL LIENS**

STATE OF NEW YORK)  
COUNTY OF SUFFOLK) ss:-

Michael J. Macco, being duly sworn, deposes and says:

1. That I am the attorney for William D. Strein, who filed a petition for relief under Chapter 7 of the Bankruptcy Code on April 30, 2015, and as such am completely familiar with the facts and circumstances involved herein.

2. The debtor owns a residence located at 25 Barbara Court, Greenlawn, NY 11740. This property had a fair market value as of the date of filing of \$467,500. Annexed hereto as Exhibit A is a copy of the Broker's Opinion Letter.

3. As of the bankruptcy filing date, the property is subject to a mortgage with M&T Bank in the amount of \$359,458.93 and a Home Equity Line of Credit with Bank of America Home Loans in the amount of \$102,841.03. This liability is set forth in the debtor's Bankruptcy Petition in Schedule D. Annexed hereto as Exhibit B is the debtor's most recent mortgage statements.

4. Pursuant to 11 USC Section 522(d)1 the debtor is entitled to a Homestead Exemption of \$11,475.00 and same is listed in debtors' Schedule C, property claimed as exempt.

5. This property is subject to certain judicial liens as follows: American Express Bank FSB, perfected October 16, 2013 in the sum of \$17,491.64 and Capital One Bank USA NA,

perfected March 27, 2014 in the sum of \$31,533.39. These judgments were listed in the debtor's Bankruptcy Petition Schedule D. Annexed hereto as Exhibit C is a copy of the Judgments.

6. 11 U.S.C. Section 522(f)1 states in pertinent part as follows: "...the debtor may avoid the fixing of a lien on an interest of the debtor in property to the extent that such lien impairs an exemption to which the debtor would have been entitled...if such lien is (a) a judicial lien..."

7. The aforementioned liens impair the debtor's exemption to which the debtor would be entitled under Section 522(d)1.

8. The aforementioned judicial liens are not of a kind that is specified in Section 523(a)5.

9. The math calculations as to the impairment of my client's exemption is as follows:

Fair market value of residence	467,500.00
Less mortgage of M&T Bank	359,458.93
Less Home Equity Line of Credit	
with Bank of America Home Loans	102,841.03
Less Homestead Exemption of debtors	11,475.00
Net Equity for Judgment Creditors	-0-

WHEREFORE, it is respectfully requested that the aforementioned judicial liens be avoided and that the Clerk of the Court remove said judgment as of record upon the filing of a certified copy of the Bankruptcy Court Order, together with such other and further relief as this Court deems just and proper.

  
Michael J. Macco

Sworn to before me this  
11<sup>th</sup> day of May, 2015.

/s/ Janine M. Zarrilli  
Janine M. Zarrilli  
Notary Public, State of New York  
No. 01ZA5084708  
Qualified in Nassau County  
Commission Expires September 8, 2017

UNITED STATES BANKRUPTCY COURT  
EASTERN DISTRICT OF NEW YORK

-----X  
In re

William D. Strein

Chapter 7

Case No. 15-71844-las

Debtor

**AFFIDAVIT**

-----X  
STATE OF NEW YORK )  
COUNTY OF SUFFOLK )

William D. Strein, being duly sworn, deposes and says:

1. I am the Chapter 7 debtor.
2. I have reviewed all the information and representations made by my counsel on this Motion to Avoid Judicial Liens of the judgment creditors because the judicial liens impair my exemption.
3. The information contained in the Application of my counsel is true and accurate to the best of my knowledge, information and belief.

  
William D. Strein

Sworn to before me this  
8<sup>th</sup> day of May, 2015

  
\_\_\_\_\_  
Notary Public

LONI BRAGIN  
Notary Public, State of New York  
NO. 01BR6172194  
Qualified in Suffolk County  
Commission Expires August 6, 2015

UNITED STATES BANKRUPTCY COURT  
EASTERN DISTRICT OF NEW YORK

-----X  
In re

William D. Strein

Chapter 7  
Case No. 15-71844-las

Debtor.  
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**ORDER AVOIDING  
JUDICIAL LIENS**

William D. Strein, the debtor herein, by his attorneys, Macco & Stern, LLP, having moved this Court pursuant to a Notice of Motion dated May 8, 2015, seeking an Order pursuant to 11 USC §522(f), avoiding the judicial liens filed against the debtor's real property located at 25 Barbara Court, Greenlawn, NY 11740, by American Express Bank FSB and Capital One Bank USA NA, and due notice having been given; and the motion having come on for a hearing before this Court on June 16, 2015, and no opposition having been filed with the Court; and after due deliberation, it is

ORDERED, that the motion is granted, as provided herein; and it is further

ORDERED, that the judicial lien of American Express Bank FSB perfected on October 16, 2013 in the sum of \$17,491.64, is hereby vacated, expunged and avoided with respect to the debtor's interest in the aforementioned real property; and it is further

ORDERED, that the judicial lien of Capital One Bank USA NA, perfected March 27, 2014 in the sum of \$31,533.39, is hereby vacated, expunged and avoided with respect to the debtor's interest in the aforementioned real property, and it is further

ORDERED, that the County Clerk of the County in which the Debtor resides be, and is hereby directed, to index and record a certified copy of this Order as an instrument vacating,

expunging, and avoiding the aforementioned judicial liens, conditioned upon the debtor ultimately obtaining a discharge in bankruptcy.

UNITED STATES BANKRUPTCY COURT  
EASTERN DISTRICT OF NEW YORK

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Debtors.

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**AFFIDAVIT OF SERVICE**

STATE OF NEW YORK )  
COUNTY OF SUFFOLK )ss:

Carol Smith, being duly sworn deposes that deponent is not a party to the above-captioned action, is over the age of 18 years and resides at West Islip, New York.

On May 12, 2015, deponent served the within NOTICE OF MOTION TO AVOID JUDICIAL LIENS, AFFIDAVITS, PROPOSED ORDER AVOIDING JUDICIAL LIENS AND EXHIBITS upon the following parties, at the addresses designated by said parties for that purpose, by depositing a true copy of the same, enclosed in a post-paid properly addressed wrapper in an official depository under the exclusive care and custody of the United States Postal Service within the State of New York:

Office of the U.S. Trustee  
Long Island Federal Courthouse  
560 Federal Plaza  
Central Islip, NY 11722

Marc A. Pergament, Esq.  
Weinerg Gross & Pergament  
400 Garden City Plaza, Suite 403  
Garden City, NY 11530

American Express Bank FSB  
c/o Joshua J. Knurr, Esq.,  
200 Vesey Street  
New York, NY 10285

Joshua J. Knurr, Esq.,  
200 Vesey Street  
New York, NY 10285



Capital One Bank USA NA  
1680 Capital One Drive  
McClean, VA 22102

Forster & Garbus LLP  
60 Motor Parkway  
Commack, NY 11725



Carol Smith

Sworn to before me this  
12<sup>th</sup> day of May, 2015.

/s/ Janine M. Zarrilli

Janine M. Zarrilli  
Notary Public, State of New York  
No. 01ZA5084708  
Qualified in Nassau County  
Commission Expires September 8, 2017

# EXHIBIT A



April 23, 2015

Mr. Michael Macco, Esq.  
Macco and Stern, LLP  
135 Pinelawn Road, Suite 120 South  
Melville, New York 11747

Dear Mr. Macco,

My wife Suzanne and I are the listing residential real estate agents for the sale of the property located at 25 Barbara Court, Greenlawn, New York 11740. The property is also identified by Town of Huntington tax map information as follows:

District:	0400
Section:	109.00
Block:	02.00
Lot:	022.000

Although, Suzanne, and I are not licensed real estate appraisers, we do have a combined 38 years' experience as residential real estate agents in Huntington Township. We are particularly familiar with real estate values in Harborfields school district. In our opinion, considering the condition of 25 Barbara Court and the amount of money that an investor or end user would have to put into the property, we feel that the current contractual selling price of \$467,500 is, in fact, fair market value for the property.

Please do not hesitate to call me should you have any questions about our evaluation. Thank you.

Very truly yours,

Brian P. Asher

Licensed Real Estate Agent  
Signature Premier Properties

# EXHIBIT B



P.O. Box 619063  
Dallas, TX 75261-9063  
RETURN SERVICE ONLY  
Please do not send mail to this address

**Mortgage Statement**

Account Number

Payment Due Date

05/02/13

**Amount Due****\$97,890.10**

If payment received after 05/01/15, \$20.64 late fee will be charged.

0-750-91937-0000170-001-1-000-000-000-000



WILLIAM DANIEL STREIN  
DOREEN STREIN  
25 BARBARA CT  
GREENLAWN NY 11740-1103

**Contact Us**

General Customer Service:

1-800-724-2224

Property Tax:

1-866-406-0949

Property Insurance:

1-888-882-1847



Correspondence Address:

Payment Mailing Address:

Lending Services, Customer Support

P.O. Box 62182

P.O. Box 1288

Baltimore, MD 21264-2182

Buffalo, NY 14240-1288

[www.mtb.com/mymortgageinfo](http://www.mtb.com/mymortgageinfo)

Statement Date: 04/03/15

**Account Information**

Property Address

25 BARBARA COURT  
HUNTINGTON NY 11740

Interest Rate

5.900%

Maturity Date

10/2027

Outstanding Principal\*

\$261,568.83

Escrow Balance

-\$31,210.96

\* This is NOT a payoff figure. To obtain the full amount required to pay off your loan, please call us at 1-800-724-2224 or fax your request to 1-866-409-2653.

**Explanation of Amount Due**

Principal

\$493.91

Interest

+\$538.15

Tax/Insurance

+\$719.13

**Amount Billed this Statement****\$1,751.19**

Amount Unpaid from Prior Statement

+\$91,145.27

Unpaid Late Charge(s)

+\$536.64

Return Item/Other Fee(s)

+\$102.00

Recoverable Corporate Advance

+\$4,355.00

**Total Amount Due 04/16/15****\$97,890.10****Important Messages**

Our records indicate that your account is currently in foreclosure. The amount reflected above is not necessarily the amount that is required to reinstate your loan. Prior to sending any funds/payments please contact the attorney firm handling your foreclosure to obtain the current reinstatement or payoff amount. A letter was previously sent to you with this contact information. If you are unsure what attorney firm is handling the foreclosure, please contact a Foreclosure Specialist at 1-800-724-1633.

**Past Payments Breakdown**

	Paid Since Last Statement	Paid Year-to-Date
Principal	\$0.00	\$0.00
Interest	\$0.00	\$0.00
Escrow (Taxes & Insurance)	\$0.00	\$0.00
Fees	\$0.00	\$0.00
Partial Payment (Unapplied)	\$0.00	\$0.00
<b>Total</b>	<b>\$0.00</b>	<b>\$0.00</b>

**Transaction Activity**

No transactions have occurred on your loan between the last billing statement and this statement date.

Bank of America



Home Loans

Customer Service  
PO Box 5170  
Simi Valley, CA 93062-5170Billing Cycle  
10/09/2014 - 10/31/2014

Account Number

Property Address  
25 BARBARA CT

001182801 AT 0.403 \*\*AUTO 1 0 1150 11740-110325 -C01-P11839-11

H HX AG ..1..2..... 800 DT123

DOREEN A STREIN

WILLIAM D STREIN JR

25 BARBARA CT

GREENLAWN, NY 11740-1103



## IMPORTANT NOTICE

**This Statement Includes a Past-Due Amount.**

Please send a payment immediately. Access to your credit line may be affected while the past-due amount remains outstanding. If you have already sent a payment, please accept our thanks, and disregard this notice.

**Make Past-Due Payments a Thing of the Past.**

MortgagePay on the Web allows YOU to make your monthly mortgage or Home Equity Line of Credit (HELOC) loan payment on-line each month. This service is free before or during the first third of your grace period. However, if allowed by applicable law, a \$3.00 service charge will apply, if your online mortgage payment is made during the second third of your grace period and a \$6.00 service charge will apply during the last third of your grace period. Check out our demo, at bankofamerica.com, to see just how easy it is.

**Counseling Programs**

Homeownership counseling programs are offered by both Bank of America, N.A. and by non-profit organizations that are approved by the Department of HUD. These non-profit homeownership counseling programs may be able to assist you concerning your delinquent loan. For Counseling Agencies in your area, call 1.800.569.4287 or 1.800.877.8339 (TDD for hearing impaired). For eligible applicants, completion of a counseling program is required for insurance pursuant to section 203 of the National Housing Act (12 U.S.C. 1709).

**ACCOUNT SUMMARY****Loan Summary**

Credit Limit	\$100,000.00
Average Daily Balance	\$99,996.10
Corresponding <b>ANNUAL PERCENTAGE RATE</b>	<b>2.7400%</b>
Daily Periodic Rate	0.00751%
Historical <b>ANNUAL PERCENTAGE RATE</b>	<b>2.7400%</b>
Days in Cycle	23
<b>FINANCE CHARGE</b>	<b>\$172.65</b>
Other Fees and Charges for the Billing Cycle <sup>†</sup>	\$0.00

**Payment Details**

Periodic <b>FINANCE CHARGE</b>	<b>\$172.65</b>
Amount Past Due	\$2,672.28
<b>Minimum Payment Due: 11/25/2014</b>	<b>\$2,844.93</b>

(see next page for transaction details)

<sup>†</sup>For a detailed list of these Fees and Charges, please see the **Recent Fee Activity** section of this statement. For more information, please see the **Other Important Information** section of this statement.

**PAYMENT**

We will credit your account the same day we receive your payment if received on a banking day (not including Saturday) by 5 p.m. in the time zone where the payment is to be mailed and addressed as shown in the payment coupon. Payments made on your account by check or other non-cash method, will be included in your "Available Credit" 10 days from receipt of payment. We may assess a late fee as described in your credit agreement if we do not receive your payment within 15 days of the payment due date.

Account Number  
DOREEN A STREIN  
WILLIAM D STREIN JR  
25 BARBARA CT

(4)

1150

Bank of America, N.A.  
PO BOX 15227  
WILMINGTON, DE 19886-5227

**HOME EQUITY LOAN****Minimum Payment Due Nov 25, 2014 \$2,844.93**

A late charge may be assessed 15 days from payment due date.

Additional  
Principal

N/A

Total Amount  
Enclosed

876726384400000284493000000000

⑈586990058⑈876726384⑈

As a reminder, failure to make your minimum payment by the payment due date could result in suspension or termination of your credit privileges.

# EXHIBIT C



**Suffolk County Clerk's Office**  
**JUDGMENT - RETRIEVAL REPORT**

04/16/2015 1:45:04 pm

**General Info for** Doc Date: 10/16/2013 Seq #: 220 Doc Type: JUDGMENT

INDEX #	DT PERFECTED	COURT	COUNTY	SHERIFF FEES	AMOUNT (\$)	COST (\$)	TOTAL (\$)	REMARKS
13 18004	10/16/2013 4:02:00 AM	SUP	SUFFOLK	0	16,956.64	535.00	17491.64	

**Debtor Info**

Last Name	First Name	Type	Street #	Street name	Street Type	Addr2	Addr3	City	State	Zip
STREIN	WILLIAM	INDIVIDUALLY AND DBA	25	BARBARA	COURT			GREENLAWN	NY	11740
SPEC REP SALES AND SPEC REP SALES			25	BARBARA	COURT			GREENLAWN	NY	11740

**Creditor Info**

Last Name	First Name	Type	Street #	Street name	Street Type	Addr2	Addr3	City	State	Zip
AMERICAN EXPRESS BANK FSB				C/O JOSHUA J KNURR ESQ		200 VESEY STREET		NEW YORK	NY	10285

**Attorney Info**

Name	Street #	Street name	Street type	Addr2	Addr3	City	State	Zip
JOSHUA J KNURR ESQ	200	VESEY	STREET			NEW YORK	NY	10285

(2)





**Suffolk County Clerk's Office**  
JUDGMENT - RETRIEVAL REPORT

04/16/2015 1:45:23 pm

**General Info for Doc Date:** 3/27/2014 **Seq #:** 341 **Doc Type:** JUDGMENT

INDEX #	D T PERFECTED	COURT	COUNTY	SHERIFF FEES	AMOUNT (\$)	COST (\$)	TOTAL (\$)	REMARKS
14 00671	3/27/2014 2:24:00 AM	SUP	SUFFOLK	0	31,008.39	525.00	31533.39	

**Debtor Info**

Last Name	First Name	Type	Street #	Street name	Street Type	Addr2	Addr3	City	State	Zip
STREIN	WILLIAM D		25	BARBARA	CT			GREENLAWN	NY	11740

**Creditor Info**

Last Name	First Name	Type	Street #	Street name	Street Type	Addr2	Addr3	City	State	Zip
CAPITAL ONE BANK USA N A			1680	CAPITAL ONE	DR			MCCLEAN	VA	22102

**Attorney Info**

Name	Street #	Street name	Street type	Addr2	Addr3	City	State	Zip
FORSTER & GARBUS LLP	60	MOTOR	PKWY			COMMACK	NY	